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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: HMO - 203736

PRELIMINARY RECITALS

Pursuant to a petition filed on November 16, 2021, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on January 5, 2022, by telephone.

The issue for determination is whether the petitioner's HMO correctly denied a prior authorization request for bilateral areola tattooing following breast and nipple reconstruction.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Michelle Rocca
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Iowa County.
2. In 2019, petitioner underwent preventative double mastectomy with breast and nipple reconstruction.

3. On July 1, 2020, petitioner underwent bilateral breast areola tattooing.
4. On January 19, 2021, petitioner went for “touch up” of bilateral breast areola tattoo.
5. On August 18, 2021, petitioner’s provider submitted a prior authorization request for bilateral areola (nipple) tattooing.
6. On August 24, 2021, the agency issued its denial letter, based on a finding that the procedure was not medically necessary.
7. On September 24, 2021, petitioner appealed the Denial.
8. On October 6, 2021, the HMO’s grievance and Appeal Committee met and decided to uphold the denial of petitioner’s request for bilateral areola tattooing, because the procedure was not medically necessary and she had received a second touch-up procedure.
- 9.
10. On November 18, 2021, the Division received petitioner’s request for hearing by U.S. Mail, postmarked November 16, 2021.

DISCUSSION

Under the discretion allowed by Wis. Stat., §49.45(9), the Department of Health Services (“the Department”) now requires MA recipients to participate in HMOs. Wis. Admin. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs’ providers, except for referrals or emergencies. Admin. Code, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the Department are the same as the general MA criteria. See Admin. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services “paid for by MA” from the HMO’s providers. The Department must contract with the HMO concerning the specifics of the plan and coverage. Admin. Code, §DHS 104.05(1). HMOs are under contract with DHS to provide the same services as those provided to persons in fee-for-service Medicaid or BadgerCare Plus. See Contract for BadgerCare Plus and/or Medicaid SSI, HMO Services Between the HMO and the Wisconsin Department of Health Services.

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals. Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the department’s denial. Wis. Stat., §49.45(5); Admin. Code, §DHS 104.01(5)(a)3. Disputes between the HMO and members about medical necessity can be appealed by the member in accordance with the appeal process outlined in the Contract. When the member files an appeal, the DHS must review the matter and consider whether BadgerCare Plus or Medicaid SSI would have covered the service on a fee-for-service basis. The DHS must affirm, modify or reject any formal decision of the HMO at the time the member files the formal appeal.

In this case, the DHS reviewed the Petitioner’s appeal and upheld the HMO’s decision to deny petitioner’s request for areola tattooing as medically unnecessary because she had already undergone two areola tattooing procedures in what it considers the third stage of the breast reconstruction process.

Petitioner underwent a prophylactic double mastectomy in July 2019 because of family history of breast cancer. She had her reconstructed nipples tattooed in July 2020 and again in January 2021. Petitioner

maintained that the color of her nipples faded after the second procedure to the extent that her provider requested a third one.

The petitioner appealed the initial denial to the HMO's Grievance and Appeal Committee and participated in its meeting by telephone. The HMO upheld the initial denial on internal appeal, based on lack of medical necessity.

Medically necessary is defined as:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code § DHS 101.03(96m). Also see ForwardHealth Topic #84.

The HMO explained that in this case, the requested procedure is not medically necessary because petitioner has completed all of the stages of breast reconstruction, including areola tattooing; that she did not have significant asymmetry of her nipple or areola and that there has been no significant change in the condition of the prior tattooing or condition of the breast, nipple, or areola.

Petitioner submitted photographs at hearing that purport to show the current faded condition of her areola tattooing. It is unclear based on this record whether these are the photographs the HMO relied on at the grievance hearing and, if not, why petitioner did not provide them to the HMO at that time or for this hearing. She argued that the denial was based on photos taken shortly after the second session and that the color faded since then. The clinic notes on January 19, 2021 included the observation that "The color held well and only a minor touch up was needed." It is not clear why the color would have held well between July 2020 and January 2021, but not thereafter, however petitioner's two sets of photos do depict significant differences in color between photos. Unfortunately, there is no reliable evidence of the dates the photos were taken, under what conditions or by whom, to form a basis for conclusions regarding the effectiveness of the previous two tattoo procedures.

Petitioner testified that she is self-conscious about the appearance of her breasts and that her boyfriend notices the fading. She testified that she does not feel the reconstruction process is complete until the areola tattooing gives her breasts the appearance she expected and wants. She did not testify to a medical need for the procedure. She did not show that she has an emotional or mental health condition as the result of her unhappiness with the appearance of her breasts.

Petitioner failed to show that the two areola tattoo procedures she was provided were inadequate to the degree that the breast reconstruction should be considered incomplete and failed to show that the procedure requested met the relevant criteria for medical necessity.

CONCLUSIONS OF LAW

There is insufficient medical evidence in this record to show that the requested third bilateral areola tattoo procedure requested on petitioner's behalf meets the Department's standards for medical necessity.

THEREFORE, it is ORDERED

The petitioner's request for hearing is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

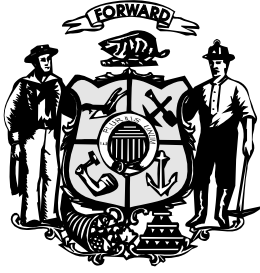
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of January, 2022

\s 

Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 27, 2022.

Division of Medicaid Services